

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS K. MILLS,

Plaintiff,

v.

ZACHERY JONES, et al.

Defendants.

No. 1:23-cv-01214-JLT-SAB (PC)

ORDER DIRECTING CLERK OF COURT
TO FILE LODGED FIRST AMENDED
COMPLAINT

(ECF No. 32)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

On December 26, 2023, Plaintiff submitted a first amended complaint which was lodged by the Court. (ECF No. 32.)

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party's pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1). Otherwise, a party may amend its pleading only with the opposing party's written consent or the court's leave, and the court should freely give leave when justice so requires. Fed. R. Civ. P. 15(a)(2).

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1 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so
2 requires.’ ” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006)
3 (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the
4 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
5 delay in the litigation; or (4) is futile.” Id. The factor of “ ‘[u]ndue delay by itself ... is insufficient
6 to justify denying a motion to amend.’ ” Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d
7 708, 712, 713 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999)).

8 Here, as Plaintiff has not previously amended the complaint and the amended complaint
9 was filed within 21 days of service of the complaint, the Clerk of Court is HEREBY DIRECTED
10 to file Plaintiff’s amended complaint, lodged on December 26, 2023, which is now the operative
11 complaint in this action.¹ (ECF No. 32.)

12 IT IS SO ORDERED.

13 Dated: **January 3, 2024**

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15 UNITED STATES MAGISTRATE JUDGE

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¹ The amended complaint reiterates repeats Plaintiff’s factual allegations against Defendants Zachery Jones and Javier Rivera giving rise to a cognizable claim for the use of excessive force in violation of the Eighth Amendment.